In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1355

BEDDING, CURTAIN AND DRAPERY WORKERS UNION, LOCAL 140 OF THE UNITED FURNITURE WORKERS OF AMERICA, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–23a) is reported at 390 F. 2d 495. The decision and order of the National Labor Relations Board (Pet. App. 26a–38a) are reported at 164 NLRB No. 27.

JURISDICTION

The decree of the court of appeals (Pet. App. 24a–25a) was entered on February 13, 1968. The petition for a writ of certiorari was filed on April 22, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

307-267—68

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that the union's picketing at certain retail stores threatened, coerced, and restrained the stores with an object of forcing them to cease doing business with one of their suppliers.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*), are set forth in the petition (pp. 2–3).

STATEMENT

On October 1, 1965, Enio Carrion, a business agent of petitioner Local 140, visited Modern Stores, Inc. ("Modern"), in Brooklyn, New York (Pet. App. 27a; J.A. 47a).[1] After inspecting all of the mattresses on display, Carrion told Mrs. Leiboff, one of Modern's owners, that the store carried "too much of U.S. Mattress" and that "U.S. doesn't belong to our union" (Pet. App. 27a; J.A. 47a–48a).[2] Carrion made reference to various bedding manufacturers whose employees were represented by Local 140 (Pet. App. 27a; J.A. 49a). When Mrs. Leiboff pointed out that Modern carried bedding of two of the manufacturers he had just named, Carrion replied, "you don't buy enough from Brooklyn firms" (*ibid.*). Carrion then threat-

[1] "J.A." refers to the joint appendix in the court below.

[2] U.S. Mattress Corp. is located at Irvington, New Jersey (Pet. App. 26a; J.A. 43a). Its employees have been represented since 1962 by Teamsters Local 418, which was certified by the Board following an election in which Local 140 appeared on the ballot (Pet. App. 26a; J.A. 144a–145a).

ened to picket Modern "[b]ecause I want you to buy more from the Brooklyn firms" (*ibid.*).

About a week later, pickets appeared in front of Modern's store with signs bearing the following legend (Pet. App. 28a): "Appeal to the Public/Please do not buy/Nonunion/Furniture/Upholstery & Bedding/ Look for this Union Label/ When Buying Furniture/ Upholstery & Bedding/[UFW Label]/ United Furniture Workers of America/AFL-CIO."

A few days after the picketing began, Carrion returned to Modern's store and complained that Modern's merchandise "did not have union labels" (Pet. App. 28a; J.A. 50a). Mrs. Leiboff pointed out that even the bedding supplied by manufacturers under contract with Local 140 did not carry union labels (*ibid.*). Mrs. Leiboff then called two of Modern's suppliers whose employees were represented by Local 140, and asked them to send her union labels (*ibid.*). One firm indicated that it had none; the other asked her to put Carrion on the phone, but Carrion refused to talk to it (*ibid.*).

After two weeks of picketing, Sol Portnoy, another of Modern's owners, spoke to Alex Sirota, president of Local 140, by telephone (Pet. App. 28a; J.A. 55a–56a, 64a). In response to Portnoy's query as to why Modern was being picketed, Sirota replied that it was because Modern "was carrying nonunion brand merchandise" (Pet. App. 28a–29a; J.A. 56a, 62a). Portnoy then promised that henceforth Modern would buy only "Local 140 union-made" bedding (Pet. App. 29a; J.A. 63a). Not long thereafter, Local 140 terminated

its picketing of Modern's store (Pet. App. 29a; J.A. 64a).

Two weeks later and without prior warning, Local 140 placed pickets bearing the same sign in front of stores operated by the New York City firms of Wucker Furniture Co. and Finkenberg Furniture Co. (Pet. App. 29a; J.A. 67a, 74a, 82a). Like Modern, these two stores carried bedding which, except for that produced by U.S. Mattress, came almost solely from manufacturers whose employees were represented by Local 140 or a sister local (Pet. App. 27a; J.A. 69a–70a, 88a–89a).

When Sidney Wucker was unable to reach Sirota by telephone, he appealed for help to Frank Schaffer, business manager of the local that represented the sales employees of Wucker and Finkenberg (Pet. App. 29a; J.A. 70a, 83a). Schaffer talked to Sirota and subsequently, as a result of these conversations, Wucker told Schaffer that he would "remove the U.S. merchandise from our floor if he removed the pickets" (Pet. App. 29a; J.A. 85a, 116a). Fifteen minutes after Wucker made this promise, the picketing ceased and did not resume (Pet. App. 29a; J.A. 86a–87a). Similarly, at Finkenberg, the pickets ceased patrolling 15 minutes after Company President Nat Radelman promised Schaffer that he would "stop buying U.S. mattresses if he removed the pickets" (Pet. App. 29a; J.A. 73a–77a).

On the foregoing facts, the Board concluded that Local 140's picketing violated Section 8(b)(4)(B) of the Act. The Board found that an object of the

picketing was to force the picketed stores to cease doing business with manufacturers of bedding not under contract with Local 140, and specifically with U.S. Mattress (Pet. App. 30a). The Board further found that the picketing was aimed at inducing a generalized loss of patronage by the stores, and hence constituted a threat, restraint, and coercion within the meaning of subparagraph (ii) of Section 8(b)(4) (Pet. App. 34a–35a). The Board ordered Local 140 to cease and desist from the unfair labor practices found, and to post appropriate notices (Pet. App. 35a–37a). The court of appeals (with one judge dissenting) sustained the Board's findings and conclusions and enforced its order (Pet. App. 1a–23a).

ARGUMENT

Contrary to petitioner's contention (Pet. 6–9), this case does not present the broad issue whether, consistent with Section 8(b)(4)(ii)(B) of the National Labor Relations Act, a labor union may engage in so-called "work preservation picketing" of retail establishments designed to encourage customers of such establishments to purchase only union-made goods. As shown below, the Board found that the union's picketing here did not have that limited objective, but was more broadly designed to achieve a total boycott of the retail establishments and thereby force those establishments to terminate dealings with certain of their suppliers; and such broader purpose sufficed to bring the picketing within the ban of the Act. Thus, the correctness of the decision below basically turns upon questions of substantial evidence, and such factual issues do not warrant further review.

1. Section 8(b)(4)(ii)(B) of the Act makes it an unfair labor practice for a labor organization "to threaten, coerce, or restrain any person," for an object of forcing that person "to cease doing business with any other person." Petitioner argues that its picketing did not violate this section because the Union's "sole purpose was the preservation of work opportunities for the members of the picketing union" (Pet. 7), and it "sought only to encourage the purchase of certain merchandise in which it had a *bona fide* economic interest, not to boycott the retail establishment" (Pet. 8).[3] But the Board found (Pet. App. 30a, 35a), and the court below sustained its findings (Pet. App. 11a, 15a), that an object of the Union's picketing was to force the picketed stores to cease doing business with U.S. Mattress, and that the picketing was not confined to a particular product but sought a total boycott of the stores.

Under *National Labor Relations Board* v. *Fruit and Vegetable Packers & Warehousemen* (*Tree Fruits*), 377 U.S. 58, these findings were sufficient to support the Board's conclusion that the picketing was illegal.

[3] Contrary to petitioner's suggestion (Pet. 17–18), it is immaterial that there was no active labor dispute between Local 140 and U.S. Mattress, or between Local 140 and any other "non-union" manufacturer whose products it might also have desired to boycott. *Local 1976, United Brotherhood of Carpenters*, 113 NLRB 1210, 1211–1212, affirmed, 357 U.S. 93; *National Labor Relations Board* v. *Washington-Oregon Shingle Weavers' District Council*, 211 F. 2d 149, 152 (C.A. 9); *National Labor Relations Board* v. *Local 11, United Brotherhood of Carpenters*, 242 F. 2d 932, 935 (C.A. 6); and see *National Maritime Union of America, AFL–CIO* v. *National Labor Relations Board*, 346 F. 2d 411, 416–420 (C.A.D.C.).

In *Tree Fruits*, the Court held that picketing of a neutral retail store, which merely requested the customers not to purchase identified products which the store obtained from an employer with whom the union had a primary labor dispute, did not constitute a threat, restraint or coercion within the meaning of Section 8(b)(4)(ii)(B); but that picketing which sought a boycott of the store's entire business did violate that section (377 U.S. at 63, 70–71). The Board's findings show that the picketing here had the latter rather than the former objective, and thus petitioner's basic challenge to the Board's decision is an attack on the sufficiency of the evidence (see Pet. 7, 13–19).

2. There is adequate evidentiary support for the Board's findings. The finding that U.S. Mattress was the target of Local 140's boycott activities was justified by the following subsidiary facts: (a) the initial complaint of Union Agent Carrion to Mrs. Leiboff that Modern "carried too much U.S. Mattress"; (b) his accompanying explanation that "U.S. Mattress doesn't belong to our union"; (c) the explanation by President Sirota of Local 140 to Modern's co-owner, Portnoy, that the reason for the picketing was that Modern was "carrying nonunion brand merchandise"; and (d) the fact that picketing of each retailer ceased shortly after it promised to discontinue its purchases of U.S. Mattress products (Pet. App. 30a).[4]

[4] Contrary to petitioner's assertion (Pet. 12), there is no conflict between the decision of the court below and *National Labor Relations Board* v. *Upholsterers Frame & Bedding Workers*, 331 F. 2d 561 (C.A. 8). In that case, the union, at the same time it picketed, passed out leaflets giving the names of local

The Board was equally warranted in finding that the Union's appeal in picketing was not limited to U.S. Mattress products but was intended to induce a generalized customer boycott of the retail stores (Pet. App. 34a–35a). As the court below noted (Pet. App. 15a), Local 140 made a broad-gauged appeal to "look for [its] union label," even though it was aware that union labels were not attached to products shipped by its own unionized manufacturers. Since the lack of a label thus did not indicate non-union merchandise, Local 140's picketing appeal could not help but broaden the boycott to products other than those manufactured by U.S. Mattress, the manufacturer who was the object of its efforts. Furthermore, as the court added (*ibid.*), the picket "signs asked customers not to buy non-union 'furniture, upholstery & bedding,' a far broader appeal than required to boycott the products of U.S. Mattress, a bedding manufacturer only."

---

manufacturers whose products consumers were encouraged to purchase. Furthermore, that case was decided by the Board prior to this Court's *Tree Fruits* decision, and the Eighth Circuit concluded that the Board's decision rested on the erroneous premise that "peaceful consumer picketing in front of a secondary establishment is *per se* illegal under the Act" (*id.* at 563). *Big Apple Supermarkets, Inc.* v. *Dutto*, 237 F. Supp. 774 (E.D. N.Y.), cited by petitioner (Pet. 12), is likewise inapposite because there the pickets apparently specifically requested customers not to buy the products of Gourmet Company.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
ALLISON W. BROWN, JR.,
Attorney,
National Labor Relations Board.

MAY 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1968